***THE HONOURABLE SRI JUSTICE V.V.S.RAO**

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+WRIT PETITION No.6186 OF 2007

% 01-05-2007

Pudi Krishnaveni, W/o Seetharam

...Petitioners

AND

$ Padala Padmavathi and others.

...Respondents

! COUNSEL FOR PETITIONER: Smt.P.Rajeswari

^ COUNSEL FOR RESPONDENT No.1: Sri V.Jagapathi

^ COUNSEL FOR RESPONDENT Nos.2 and 3: G.P for Panchayat Raj

^ COUNSEL FOR RESPONDENT No.4 : Sri M.Prabhakar Rao

<GIST

>HEAD NOTE:

? CASES REFERRED:

1 2006 (4) ALT 741
2 2004 (5) ALD 525
3 2001 (1) ALT 235
4 1995 (3) ALT 217
5 (1998) 8 SCC 564

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.6186 OF 2007

Dated 1st MAY, 2007

BETWEEN:
Pudi Krishnaveni, W/o Seetharam.

… Petitioner

And

Padala Padmavathi and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.6186 OF 2007

ORDER:

The elections to the office of sarpanch and members of Tumbali Gram Panchayat were held on 26.07.2006. The petitioner herein was declared as elected as sarpanch of the village. Second respondent herein challenged the election in E.O.P.No.1 of 2006 on the file of Election Tribunal-cum-Junior Civil Judge, Parvathipuram. By impugned order, dated 02.03.2007, Election Tribunal declared the election of petitioner herein as illegal and void, and further declared first respondent as elected to the office of sarpanch of Tumbali Gram Panchayat. Aggrieved by the same, present writ petition is filed seeking a writ of Certiorari to quash the order of the Election Tribunal. First respondent filed caveat petition and also filed counter affidavit opposing the writ petition. The matter is heard finally at the stage of admission itself.

The brief fact of the matter is as follows. As per the election notification issued by the State Election Commission, last date for filing nominations was 19.07.2006. Petitioner, respondent and thirteen others filed their nominations. Petitioner filed two sets of nominations. Scrutiny of the nominations was conducted on 20.07.2006. Returning Officer, fourth respondent, published list of validly nominated candidates in Form VI under Rule 12(4) of A.P.Panchayat Raj

(Conduct of Election) Rules, 2006 (the Rules, for brevity) promulgated by Government vide G.O.Ms.No.142, dated 03.05.2006. Last date for withdrawal of nominations under Rule 14(1) of the Rules was 23.07.2006. Petitioner herein submitted notice of withdrawal of candidature in Form VII under Rule 14(1) on that date. Fourth respondent issued Form VIII, i.e., publication of notice of withdrawal of candidature showing the name of the petitioner also. However, the name of the petitioner was also included in Form IX i.e., list of contesting candidates under Rule 15 of the Rules and she was allotted election symbol. First respondent allegedly raised objection, which was not rejected. Therefore, first respondent unsuccessfully filed an appeal before third respondent herein under Rule 13 of the Rules. Ultimately, petitioner was elected as sarpanch with 602 votes, defeating first respondent, who got 501 votes. The election was challenged on the ground that the nomination of petitioner was improperly accepted after withdrawal of candidature, which materially affects the result of the first respondent.

The petitioner opposed the election O.P., before the Election Tribunal, mainly contending that she filed two sets of nominations, that both of them are found to be in order, that the Returning Officer asked her to withdraw one set of nomination and therefore, she withdrew the nomination and that the withdrawal of one nomination cannot amount to withdrawal from the contest. Fourth respondent also filed counter, which was adopted by respondents 2 and 3 herein. They alleged that there was no illegality in allowing the petitioner to contest election even after withdrawal of one set of nomination.

During the trial before the Election Tribunal, first respondent examined herself as P.W.1. Petitioner herein examined herself as D.W.1 and marked Exs.B.1 to B.4, which are Forms V, VI, VIII and IX. The Returning Officer was examined as R.W.1. After considering evidence and the legal position, the learned Election Tribunal held that withdrawal of any one of the nominations amounts to withdrawal of candidature as per Rules. The election Tribunal relied on the decision of this Court in **Maram Sujathamma v State Election Commission**[1]. The Tribunal then proceeded to consider the question of declaring first respondent as elected. By placing reliance on the decision of this Court in **R.Jayalakshmamma v Election Tribunal-cum-Senior Civil Judge**[2], the Tribunal declared first respondent elected as sarpanch of gram panchayat.

Learned counsel for petitioner vehemently contends that petitioner filed two sets of nominations and withdrawal of one set of nomination does not amount to withdrawal of candidature or

withdrawal from contest to the office of sarpanch. She submits that the Election Tribunal grossly erred in coming to the conclusion that petitioner withdrew her candidature. Secondly, she submits that in the absence of other candidates, who contested the election, learned Tribunal ought not to have declared first respondent as elected. She refers to Rule 4(ii) of the A.P.Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (the Election Rules, for brevity) as well as the decision of a Division Bench of this Court in **Anjamma v S.Pushpamma**[3]. **Per contra**, learned counsel for first respondent submits that when once nomination is withdrawn by the candidate, the same amounts to withdrawal of candidature as per the Election Rules. He placed reliance on the decision of a Division Bench of this Court in **K.Venkateswarlu v Government of A.P.,**[4] and **Maram Sujathamma** (supra). He contends that when petitioner did not raise any objection before the Election Tribunal regarding non-joinder of parties and that in view of the decision of this Court in **Jayalakshmamma** (supra) declaring the first respondent as elected does not suffer from any error.

Two questions that fall for consideration are: (i) whether withdrawal of one set of nomination out of two sets of valid nominations amounts to withdrawal of candidature; and
(ii) whether declaration of first respondent as duly elected sarpanch by the Election Commissioner is sustainable.

The first point for consideration is covered by the Judgment of the Division Bench in **K.Venkateswarlu** (supra), which has been recently followed by learned single Judge in **Maram Sujathamma** (supra). Before referring to these Judgments, the relevant Rules may be noticed. Rules 8 to 13 of the Rules deal with presentation of valid nominations, publication of list of nominations received and scrutiny of nomination papers. Rule 14 deals with withdrawal of candidature and Rule 15 deals with publication of list of contesting candidates. Rules 14 and 15(1) of the Rules, relevant for our purpose, read as under.

> **14. Withdrawal of candidature:-** (1) **Any candidate may withdraw his candidature by notice in writing in Form VII signed by him** and delivered to the Returning Officer by such candidate in person at any time after the presentation of his nomination paper and not later than 3-0' clock in the afternoon of the third day succeeding that appointed for scrutiny of the nominations whether or not it is a public holiday. Where such notice is not delivered by such candidate in person, it shall be delivered by his proposer or election agent who has been authorized in this behalf in writing by such candidate. The Returning Officer shall give a receipt for the same as provided in Form

VII on being satisfied as to the genuineness of the notice of withdrawal and the identity of the candidate.

(2) The Returning Officer on receiving a notice of withdrawal under sub-rule (1) shall, as soon as may be, cause a notice of the withdrawal to be published in Form VIII.

(3) **A candidate, who has withdrawn his candidature under sub-rule (1) shall not be allowed to cancel the withdrawal.**

15. Publication of List of Contesting candidates:- (1) **On the expiry of the time allowed for withdrawal of candidature under Rule 14, the Returning Officer shall prepare in Telugu language a list of Form IX of persons whose nominations have not been rejected and who have not withdrawn their candidature** and publish it on the notice board of his office forthwith whether or not it is a public holiday. The list shall contain the names of the candidates in alphabetical order in Telugu and shall describe them as in their nomination paper.

(emphasis supplied)

As per Rule 14 of the Rules, any candidate may withdraw his candidature by notice in writing in Form VII. After receiving such notice of withdrawal, Returning Officer has to cause a notice of withdrawal in Form VIII. These Forms read as under.

FORM – VII

(See Rules 14(1))

NOTICE OF WITHDRAWAL OF CANDIDATURE

Election to Sarpanch/Member of Ward No……. of …….. Gram Panchayat/Member, …….. Territorial Constituency of …… Mandal Parishad/Zilla Parishad.

To
The Returning Officer,

I, …….. a candidate validly nominated at the above election do hereby give notice that **I withdraw my candidature.**

Place:
Date :

Signature of Candidate

This notice was delivered to me at my office at …… (hour) on …….. (date) by ……. (name) the candidate/candidate's proposer/candidate's election agent who has been authorized in writing by the candidate to deliver it.

Date: **Returning Officer**

(emphasis supplied)

RECEIPT FOR NOTICE WITHDRAWAL

(To be handed over to the person delivering the notice)

The notice of withdrawal of candidature by …….. a validly nominated candidate at the election to the office of the Sarpanch/Member of Ward No…… of ……. Gram Panchayat/Member, ……. Territorial Constituency of …… Mandal Parishad/Zilla Parishad was delivered to me by the candidate/candidates proposer/candidate's election agent who has been authorized in writing by the candidate to deliver it at my office at …… (hour) on ……. (date).

Returning Officer

FORM VIII

(See Rules 14(2))

PUBLICATION OF NOTICE OF WITHDRAWAL OF CANDIDATURE

Election to Sarpanch/Member of Ward No……. of ……. Gram Panchayat/Member, ……. Territorial Constituency of ……. Mandal Parishad/Zilla Parishad.

Notice is hereby given that the following validly nominated candidate/candidates at the above election withdraws/withdraw his candidature/their candidature today.

Name of the validity Nominated candidate	Address of validly nominated candidate	Remarks
1.		
2.		
3.		
4.		
Etc		

Date: **Returning Officer**

(emphasis supplied)

After publishing the same, the Returning Officer has to wait till the expiry of time allowing for withdrawal of candidate under Rule 14 of the Rules and then shall prepare a list of contesting candidates in Form IX. As those candidates, who filed Form VII withdrawing from contest are included in Form VII (publication of notice of withdrawal of candidates) cannot be included in Form IX. In this case, there is no dispute that the petitioner herein submitted her withdrawal in Form VII and her name was found in Form VIII. Therefore, her name cannot be included in Form IX (publication of list of contesting candidates). Here

the Returning Officer committed a mistake and allowed the petitioner to contest the election. Indeed, as rightly contested by learned counsel for first respondent, the nomination of petitioner was improperly accepted, which materially affects of the results. A reading of Rules 14, 15 along with Forms VII and VIII would show that the law contemplates withdrawal of candidature and does not contemplate withdrawal of one nomination. When once nomination is withdrawn in Form VII, the law deems it withdrawal from the contest. In **K.Venkateswarlu** (supra), a Division Bench of this Court was dealing with Rules 9, 10 and 11 of the A.P.Panchayat Raj (Conduct of Elections) Rules, 1994 (1994 Rules, for brevity), which have now been superseded by the present Rules. These Rules are *in pari materia* with Rules 14 and 15 of the present Rules and Forms considered therein are similar to the Forms herein extracted above. Considering these, the Division Bench of this Court laid down as under.

> … That stage of the election process hence necessarily comes after the affixture of the list of validly nominated candidates under Rule 9(5) and withdrawals effected thereafter. Rule 11(1) specifically states that the list of validly nominated candidates is to be in Form 8 and is to consist of persons whose nominations have not been rejected and who have not withdrawn their candidature. Sub-rule (3) of the Rule 11 provides that if after such publication in Form 8 poll becomes necessary, symbols are to be assigned. A combines reading of the three rules, 9, 10 and 11, hence unmistakably shows that the withdrawal by a candidate relates not to any one of his nominations but to his candidature as a whole and that once the withdrawal option is exercised, the list of valid nominations are to be published without the names of the candidates who have withdrawn. If the Election Officer finds that there is only one validly nominated candidate, there would not be any question of allotment of symbols under Rule 11(3) as no poll would be necessary and the single candidate is to be declared unanimously elected. **The matter is clear from the wordings of Rules 10 and 11 itself which only refer to withdrawal of candidature. Even further, Form 6 in which the withdrawal is made is explicit saying in the notice purported to be given to the Election Officer that "I, ……, a candidate validly nominated at the above election do hereby give notice that I withdraw my candidature". The signed forms have been also produced before us, and show the withdrawals to be in the same form. There hence cannot be any mistaken nor any interpretation made that when a candidate exercises the option to withdraw, the exercise is in respect of any one of the nominations only.** Such a meaning goes against the provisions of the rule and the form and the entire scheme of the election. There is no warrant for it. The stand adopted by the election Officer is also patently without any rational meaning as if a candidate has filed more than one valid nominations, there could not be any reason why he would withdraw only one of his nominations.
>
> (emphasis supplied)

In **Maram Sujathamma** (supra), this Court considered 1994 Rules and laid down that withdrawal of nomination amounts to withdrawal of candidature. Therefore, it must be held that the impugned order of the Election Tribunal does not suffer from any error apparent on the face of record. Election Tribunal has appreciated the facts correctly and applied the law correctly.

Insofar as second question is concerned, again the issue is covered by Division Bench Judgment. Rule 4(i) of the Election Rules is to the effect that if the irregularities alleged in the petition are materially affect the validity of the election and more than one returned candidate, all returned candidates shall be joined as parties. Rule 4(ii) of the Election Rules lays down that the petitioner in the election petition shall join as respondents, all other candidates who are nominated for the election but who had not withdrawn before the date, if the petitioner desires a declaration from the Election Tribunal that he himself or any other candidate has been duly elected. This is a mandatory Rule and in the absence of compliance, the petitioner cannot seek a declaration from the Election Tribunal that he/she may be declared as elected after setting aside the impugned election. The Division Bench in **Anjamma** (supra), after referring to **Ram Pratap Chandel v Chaudhary Lajja Ram**[5], laid down as under.

> Rule 4(ii) of the Rules, 1995, as extracted above, clearly postulates that the election petitioner if so desires in addition to calling in question the election of the returned candidates, claim a declaration that he himself or any other candidate has been duly elected in which case he shall join as respondents to his petition all other candidates. **The said rule specifically says unless the election petitioner impleaded all the candidates who contested the election he cannot be declared as elected in the absence of such parties. Significantly though when the respondent impleaded other contesting candidates to the Election Petition but the advocate who representing her filed a memo withdrawing the Election Petition against the other contested candidate. In view of the infirmity, the first respondent is not entitled to any declaration to declare her elected as Sarpanch of Alwanpalli village.**
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> (emphasis supplied)

The declaration given by the Election Tribunal that the first respondent is elected as sarpanch is unsustainable as the election petition was non-complaint with Rule 4(ii) of the Election Rules and all the candidates were not impleaded as party respondents to election petition.

In the result, for the above reasons, the writ petition is partly allowed. The declaration given by Election Tribunal-cum-Junior Civil

Judge, Parvathipuram, in E.O.P.No.1 of 2006, dated 02.03.2007, that first respondent herein has been duly elected for the post of sarpanch of Tumbali Gram Panchayat is set aside. The declaration that the election of petitioner herein as sarpanch is illegal and void, is sustained and the writ petition stands dismissed insofar as this relief is concerned. The second respondent shall now initiate steps for conduct of elections to Tumbali Gram Panchayat in consultation with State Election Commission forthwith. There shall be no order as to costs.

(V.V.S.RAO,J)

01.05.2007.
pln

Note: LR copy be marked.
(By order)
pln

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[1] 2006 (4) ALT 741
[2] 2004 (5) ALD 525

[3] 2001 (1) ALT 235
[4] 1995 (3) ALT 217
[5] (1998) 8 SCC 564